

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 975 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL and Sd/-

MR.JUSTICE R.P.DHOLAKIA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?
1 to 5 - No
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STATE OF GUJARAT

Versus

JAYANTILAL TRIBHOVAN VYAS

Appearance:

PUBLIC PROSECUTOR for Petitioner

CORAM : MR.JUSTICE B.C.PATEL and

MR.JUSTICE R.P.DHOLAKIA

Date of decision:06-05-1998

C.A.V JUDGEMENT (Per: R.P.Dholakia,J.)

The respondents-accused were charged and tried by the learned Assistant Sessions Judge, Junagadh for the offences punishable under Secs.306 and 498(A) read with Sec.34 of Indian Penal Code in Sessions Case No.51 of 1990 wherein at the end of trial, learned Assistant Sessions Judge, vide judgment and order dated 1-8-1997, has acquitted the respondents-accused against which, the

present appeal is preferred by the State.

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#. It is the prosecution case that on 4-11-1989, complainant-father of the deceased had filed a complaint before Una Police Station alleging that accused were giving physical and mental torture to the deceased-Jyotiben and as a result, she committed suicide by jumping into a well of Amu Karsan. Police started the investigation and on completion of the same, submitted the charge-sheet against the accused. Accused was committed to the Court of Sessions and a charge was framed against the accused and they pleaded to be tried.

#. Learned Addl. Public Prosecutor, on going through the evidence, has argued that learned Assistant Sessions Judge ought to have believed the oral evidence of material witnesses, namely Sarojben Labhshankar, Dharmishtaben Labhshankar and Hansaben Pravinchandra. He has also argued that they are the nearest relatives and natural witnesses as because generally, the victim will make a complaint with their nearest relatives and in such type of cases, their evidence was required to be considered as a material evidence and on that basis, accused ought to have been convicted. He has also argued that Jyotiben died within nine months of her marriage. Therefore, a presumption ought to have been raised that due to mental and physical torture given by the accused, deceased has committed suicide.

#. We have gone through the evidence shown to us by the learned Addl. Public Prosecutor. It is true that in this type of case, generally, the victim will make the complaint with their nearest relatives. But sometimes they are interested witnesses also. Therefore, the Court should scrutinise their evidence very closely. Learned Assistant Sessions Judge has discussed the above evidence at page 19 in para 18. After considering the oral evidence and cross-examination of father, mother, brother, sister and neighbour of the victim, it is clearly established that their evidence is not trustworthy and reliable as there are lot of contradictions, omissions and improvements on material aspects.

#. It transpires from the record that deceased was not allowed to attend the marriage ceremony of a relative on 21-5-1989. However it is also clear from the record that this was the first occasion, which according to the prosecution gave rise to differences. It is also admitted that accused No.1 used to remain out of home for

the whole day for business and thus, deceased was required to remain at home alone. The house of accused is far away and that was not liked by the complainant. This fact reveals from the correspondence produced on record. It appears that, remaining alone at the house and residing at a distance place was not liked, were the main causes. The letter which is produced on record reveals that after taking residential premises at Una, arrangement should be made to call Jyoti, the deceased. The learned Judge has appreciated and has come to the conclusion that complainant was not willing to send Jyoti at the house of her husband. The letter also reveals that between the two, namely, the deceased and her husband, there were no disputes. Only grievance made in the letter was that no separate house is taken at Una but from that it cannot be said that there was any ill-treatment. Several contradictions are brought on record which are considered by the learned trial Judge. From the correspondences between the complainant and brother of accused No.1 and also with accused No.1, it is not established that the accused have given any mental and physical torture to the deceased. What is established is that father of the deceased was insisting the deceased to stay at Una while she wanted to stay at Delvada. Witness Pravinbhai has not supported the prosecution and he was declared hostile and nothing has come out from his cross-examination which helps the prosecution.

#. In short, the prosecution has failed to prove the charges levelled against the accused and we do not find it necessary to interfere with the judgment and order passed by the learned Assistant Sessions Judge.

#. We have gone through the evidence which was suggested to be read by learned Addl. Public Prosecutor. In an appeal against the order of acquittal, though there is no limitation upon the power of the High Court to review at large the evidence upon which, the acquittal was founded and to reach to a conclusion that the order of acquittal should be reversed, in exercising that power and before reaching its conclusions upon fact, the High Court should and will always give proper weight and consideration to such matters as (1) the view of the trial Judge as to the credibility of the witnesses; ((2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at the trial; (3) the right of the accused to the benefit of any doubt, and, (4) the slowness of an appellate Court in disturbing a finding of fact arrived at by a Judge who had the advantage of

seeing the witnesses (AIR 1934 PC 227).

#. We are not discussing the evidence of each witness in detail in view of the observations made by the Hon'ble Apex Court in the case of STATE OF KARNATAKA VS. HEMAREDDY reported in AIR 1981 SC 1417 which reads as under:-

".... This court has observed in *Girija Nandini Devi V. Bigendra Nandini Chaudry* (1967) 1 SCR 93: (AIR 1976 SC 1124) that it is not the duty of the appellate court when it agrees with the view of the trial Court on the evidence to repeat the narration of the evidence or to reiterate the reasons given by the trial Court expression of general agreement with the reasons given by the Court the decision of which is under appeal, will ordinarily suffice."

#. Based on the above two observations and the facts and circumstances of the case, appeal is dismissed.

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